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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/535,185	03/27/2000	George McBride	CARDIOBEAT-2	3796
7590	08/24/2004		EXAMINER	
Donald J Lenkszus P O Box 3064 Carefree, AZ 85377-3064			KIM, PAUL L	
			ART UNIT	PAPER NUMBER
			2857	
DATE MAILED: 08/24/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/535,185

Applicant(s)

MCBRIDE ET AL.

Examiner

Paul L Kim

Art Unit

2857

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 May 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-3, 8, 9, and 13-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown and Yamada et al.

With reference to claims 1, 8, 9, and 13-18, Brown teaches a method of providing medical testing comprising: providing a central serving apparatus coupled to the Internet (fig. 1, part 18) that has access to software or script programs (fig. 2, part 40 and col. 5, lines 16-29), uploading medical test measurement data to the server from the remote locations via the Internet (col. 2, lines 57-65 and col. 3, lines 22-25), processing the medical measurement data to produce test information (fig. 11b, step 222), and downloading the test information to a user coupled to the internet (fig. 2, part 58 and col. 3, lines 35-37).

Brown teaches the server processing the test data but does not specify selecting a computer program algorithm at the server to process the test data. Yamada et al teaches a medical diagnosis system that processes imaging data according to an algorithm selected by a user (col. 2, lines 49-60). Since Brown and Yamada et al are both within the art of processing medical test data received from sensors over a network, it would have been obvious to one of ordinary skill in the art, at the time of the

invention, to modify Brown, so that a user is able to select an algorithm for processing data, as taught by Yamada et al, so as to derive the benefit of a flexible medical system that suits the need of the medical test being performed.

With reference to claim 2, Brown teaches providing a database accessible by the server and storing the information in the database (fig. 2, part 38).

With reference to claim 3, Brown teaches receiving patient ID information for the data, storing information in the database, and associating it with patient ID (col. 16, lines 60+).

3. Claims 4-7 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown and Yamada et al in view of Basso et al.

With reference to claims 4, 7, and 19, Brown does not teach receiving a request for the information from a requester and determining if it has authorization. Basso et al teaches a medical system for receiving a request for the information from a requester and determining if it has authorization (col. 1, lines 7-14). It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to modify Brown, so that the medical system has an authorization function, as taught by Basso et al, in order to prevent strangers from accessing sensitive and confidential information.

With reference to claims 5 and 6, Brown teaches receiving and downloading requests via Internet (abstract).

4. Claims 10-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown and Yamada et al in view of Shimakawa et al.

Brown teaches uploading test measurement data to the server, but does not teach automatic un-installing software after the test data is uploaded. Shimakawa et al teaches a software management system in which a client computer automatically uninstalls software after it has been used. It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to modify Brown and Boroom et al, so that the medical system automatically un-installs software after the test data is uploaded, as taught by Shimakawa et al, in order to prevent unauthorized use of software when the software is no longer needed.

Response to Arguments

5. Applicant's arguments filed May 12, 2004 have been fully considered but they are not persuasive. The invention of Brown takes patient measurement data with an apparatus (figs. 3 & 4), downloads the data to the server (fig. 2, part 18), processes the data (col. 5, lines 14-27), and returns the results to a user apparatus (fig. 2, part 20). With regard to arguments on page 7 that Brown does not teach access to medical test software or that the apparatus does not teach performing medical testing on the patient, applicant's attention is drawn to column 4, lines 64+. Although Brown does not specifically mention "software" it is inherent that a computer program would have to be used in order to process information.

With regard to arguments on page 8 that Brown does not teach producing test information from measurement information, applicants attention is directed to figure 18.

Brown does not specify "utilizing algorithms" to process test data. However, Brown teaches that a variety of patient monitoring devices can be attached to the patient apparatus (col. 5, lines 49-54). These measurements are sent to the server (col. 6, lines 25-31). Because the server in Brown's invention supports a variety of monitoring device, it would have been obvious, to one of ordinary skill in the art, to include the algorithm selecting means into the server, as taught by Yamada et al, so as to derive the benefit of improved and more accurate measurement results from specialized algorithms for the different monitoring devices.

For further evidence that processing a wide variety of data with different algorithms is well known in the art, Maus et al (US 6,602,469) teaches a patient monitoring apparatus, in which measurement data is processed at a server.

In response to applicant's argument, on the bottom of page 8, that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

In response to applicant's argument that Yamada et al is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Yamada et al deals with medical testing of patients by use of X-rays, which is a monitoring device that is used for medical purposes. Both Brown and Yamada et al use a computer to process medical data.

Although Brown does not specify sensor placement information being downloaded, human interactive software is well known in the art. For further evidence Fujimoto (PN 5,339,821) teaches a computerized medical apparatus that instructs a patient in placing a sensor on their body (abstract & figure 6). It would have been obvious, to one of ordinary skill in the art, to modify Brown, so that the apparatus is human-interactive, in order to make the system more user friendly. Providing sensor placement information does not add substantial weight to the patentability of the claims because the limitation is unrelated to the functioning of the networked testing apparatus.

With regard to arguments on page 10 that Shimakawa does not teach downloading software, claims in a pending application should be given their broadest reasonable interpretation (*In re Pearson*, 181 USPQ 641 (CCPA 1974)). Shimakawa clearly teaches that the idea of doing a software install is well known in the art.

Conclusion

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul Kim whose telephone number is 571-272-2217. The examiner can normally be reached on Monday-Thursday 10:00-6:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marc Hoff can be reached on 571-272-2216. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9306 for regular communications and for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0956.

PK
August 17, 2004


MARC S. HOFF
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2800